

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Bobby D. & Darlene Privett)	
	Dist. 3, Map 66B, Group B, Control Map 66B,)	Hamilton County
	Parcel 1)	
	Commercial Property)	
	Tax Year 2005)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$197,200	\$ -0-	\$197,200	\$78,880

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on May 10, 2006 in Chattanooga, Tennessee. In attendance at the hearing were Mr. & Mrs. Privett, the appellants, and Hamilton County Property Assessor's representatives Woody Sliger and James R. Gattis, C.A.E.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 1.60 acre commercial lot located at 9735 Dayton Pike in Soddy Daisy, Tennessee.

The taxpayers contended that subject property should be valued at approximately \$60,000. In support of this position, the taxpayers argued that they purchased subject lot on June 6, 2003 for \$50,000. The taxpayers stated that they were willing to buy subject property because it adjoins other property they own. The taxpayers asserted that subject property has minimal utility and value to other potential buyers because it would cost over \$100,000 to make sewer available. Moreover, the lot is unsuitable for a septic system because the soil consists of clay that has been cut.

The taxpayers also contended that the appraisal of subject property does not achieve equalization. In support of this position, the taxpayers noted the assessor's appraisal of a nearby tract.

The assessor contended that subject property should be valued at \$100,000. In support of this position, Mr. Sliger conceded that he had not previously been aware of the fact subject property lacks sewer. Nonetheless, Mr. Sliger recommended a value of \$100,000 for two reasons. First, subject property was not offered for sale on the open market at the time the taxpayers purchased it. Second, and most importantly, the taxpayers excavated subject site

by removing a 40 foot bank. Mr. Sliger argued that the excavation significantly enhanced the value of subject property.

I. Jurisdiction

The first issue before the administrative judge concerns jurisdiction. This issue arises from two factors. First, the disputed appraisal was not appealed to the Hamilton County Board of Equalization in accordance with Tenn. Code Ann. § 67-5-1412(b)(1). Second, the taxpayers failed to appeal to the State Board of Equalization within forty-five days from the tax billing date.

The administrative judge finds that the jurisdiction of the State Board of Equalization is governed by Tenn. Code Ann. § 67-5-1412(e) which provides as follows:

(e) Appeals to the state board of equalization from action of a local board of equalization must be filed before August 1 of the tax year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to § 67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. *If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment. The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.*

[Emphasis Supplied]

The administrative judge finds that the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc., Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). See also John Orovets, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayers must show that circumstances beyond their control prevented them from appealing to the Hamilton County Board of Equalization; and (2) filing a direct appeal with the State Board of Equalization within forty-five days from the billing date.

The taxpayers testified that they own numerous parcels of property in Hamilton County, but did not receive the assessment change notices issued by the assessor of property except in two (2) or three (3) instances. According to the taxpayers, it was not until they received their tax bills that they became aware of the increased appraisal. Mr. Privett testified that he contacted the assessor of property, Bill Bennett, shortly after receiving the tax bills. Mr. Privett essentially stated that he did not file his appeal until December 20, 2005 because he assumed it would be resolved locally.¹

Based upon the evidence in the record, the administrative judge finds that the taxpayers established reasonable cause for failing to appeal as provided in Tenn. Code Ann. § 67-5-1412(e).² The administrative judge recognizes that under Tenn. Code Ann. § 67-5-508(a)(3) assessment change notices are effective when mailed regardless of whether they are received. However, the Assessment Appeals Commission has ruled in cases such as *Mary M. Headrick & Detlef R. Matt* (Knox Co., Tax Year 1993) that non-receipt of an assessment change notice due to problems associated with mail delivery can constitute a circumstance beyond the taxpayer's control. Similarly, the administrative judge finds Mr. Privett's unrefuted testimony established that he promptly contacted the assessor of property after receiving the tax bills, but understandably waited to file an appeal with the State Board of Equalization since the appraisal was apparently being reviewed locally.

II. Value

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$100,000 as contended by the assessor of property.

Since the taxpayers are appealing the appealing party, the burden of proof is on the taxpayers. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the taxpayers' purchase of subject property cannot provide a basis of valuation for several reasons. Initially, the administrative judge would observe that one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990);

¹ The administrative judge finds that the appeal was postmarked December 20, 2005 which constitutes the filing date pursuant to Tenn. Code Ann. § 67-1-107.

² The administrative judge recognizes that additional proof from the assessor and a more rigorous cross-examination of the taxpayers could possibly support a different conclusion. Significantly, the administrative judge finds that the assessor did not introduce copies of the assessment change notices or any evidence concerning their mailing.

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

Moreover, subject property was not offered for sale on the open market. Finally, the taxpayers seemingly ignore the value attributable to the excavating. Indeed, Mr. Privett testified that the market value of the excavation work was approximately \$150,000.

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in *Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982), holds that "as a matter of law property in Tennessee is required to be valued and equalized according to the 'Market Value Theory'." As stated by the Board, the Market Value Theory requires that property "be appraised annually at full market value and equalized by application of the appropriate appraisal ratio . . ." *Id.* at 1.

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

In contending the entire property should be appraised at no more than \$60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more underappraised than average does not entitle him to similar treatment. Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not adequately indicated how the properties compare to his own in all relevant respects. . . .

Final Decision and Order at 2. See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were underappraised . . ." Final Decision and Order at 3.

Based upon the foregoing, the administrative judge would normally affirm the current appraisal of \$197,200 based upon a presumption of correctness. In this case, however, the

administrative judge finds that Mr. Sliger's estimate of value constitutes the upper limit and should therefore be adopted as the basis of valuation.

The administrative judge finds that insufficient evidence was introduced to reliably establish the cost to have sewer or the value of the excavation work. Interestingly, however, if the taxpayers' purchase price is adjusted by adding the value of the excavating and deducting the cost for sewer, a value of \$100,000 results ($\$50,000 + \$150,000 - \$100,000$). Of course, the administrative judge recognizes that additional proof would almost certainly result in significant modifications to the assumed excavation and sewer costs.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$100,000	\$ -0-	\$100,000	\$40,000

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of May, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Bobby D. & Darlene Privett
Bill Bennett, Assessor of Property